

B. REMARKS

No claims have been canceled or added in this reply. Hence, Claims 1, 3, 5-19, 21-42, 44, 46-60, 62-83 and 85 are pending in this application. The amendments to the claims do not add any new matter to this application. All issues raised in the final Office Action mailed December 21, 2006 are addressed hereinafter.

REJECTION OF CLAIMS 1, 3, 5-10, 13, 16-19, 21-42, 44, 46-51, 54, 57-60 AND 62-82 UNDER 35 U.S.C. § 103(a)

In the Final Office Action, Claims 1, 3, 5-10, 13, 16-19, 21-42, 44, 46-51, 54, 57-60 and 62-82 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy et al.*, U.S. Patent No. 6,792,459 (hereinafter “*Elnozahy*”) in view of *Mortensen et al.*, U.S. Patent No. 5,481,735 (hereinafter “*Mortensen*”) and further in view of *Guthrie*, U.S. Patent No. 6,266,681. It is respectfully submitted that Claims 1, 3, 5-10, 13, 16-19, 21-42, 44, 46-51, 54, 57-60 and 62-82 are patentable over *Elnozahy*, *Mortensen* and *Guthrie*, considered alone or in combination, for at least the reasons provided hereinafter.

CLAIM 1

Claim 1 is directed to a method for measuring client side performance that recites:

“an application program executing on a server device processing a request from a client process executing on a client device and generating an item in response thereto that is to be sent to the client process; and
at the server device:
intercepting the item generated by the application program;
determining a percentage of total items sent to the client process that are to be modified;
determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and
if, based upon the percentage of total items sent to the client process that are to be modified, the intercepted item is to be modified, then
modifying the intercepted item transparently with respect to the application program to produce a modified item that includes code which, when processed by one or more processors at the client device causes:
at the client device, measuring performance related to a service associated with the item, and
at the client device, performing one or more acts based on a measurement resulting from said step of measuring

performance, wherein the one or more acts includes sending data indicating the measurement to an entity over the network; and sending the modified item over the network to the client process executing on the client device.”

It is respectfully submitted that Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy, Mortensen* and *Guthrie*, considered alone or in combination. In the approach for measuring client side performance recited in Claim 1, the application program executing on the server device processes a request from a client process executing on a client device. In response to the request, the application program generates an item that is to be sent to the client process. The item is intercepted and modified at the server device. The determination of whether to modify the item is based upon the percentage of total items sent to the client process.

One significant distinction between the approach recited in Claim 1 and the approaches described in *Elnozahy Mortensen* and *Guthrie* is that in Claim 1, the item generated by the application is both intercepted and modified at the server device in response to a request from the client process executing on the client device. *Elnozahy*, the instrumented Web pages are generated and installed on the host server before any requests for the instrumented Web pages are processed. More specifically, in *Elnozahy*, Web pages 31 through 33 are sent from host's server 110 to server 185 to be instrumented by inserting scripts 210, 220 and 230 into Web pages 31-33. Server 185 then sends the pages 131-133, which have the scripts 210-230 attached, back to the host's server 110 for replacing the web pages in storage unit 115. These web pages 131-133 are all part of the same bundle 200 of pages that the verifying agent's server 185 has instrumented. When a user 149 requests one of the instrumented pages 131-133, the scripts associated with the page are also delivered to the user's client 150. Once delivered, the scripts 210-230 are executed by the client 150 responsive to certain events. Thus, the Web pages 31-33 are not intercepted and modified after being requested by a client process in the manner recited in Claim 1. Instead, the Web pages 31-33 are instrumented before being requested by a client process.

Mortensen is relied upon for teaching the steps in Claim 1 relating to selecting a percentage of items for modification and does not teach or suggest intercepting and modifying

the item generated by the application at the server device in response to a request from the client process executing on the client device. In *Guthrie*, the code that is injected into an HTML document by the interceptor code 402 is not injected at the web server that served the HTML document. The interceptor code 402 or other injection system is described as being implemented at an intermediary, “to be operable, the injection system of the present invention is installed as an intermediary between the user’s current browser and any server with which the browser communicates.” Col. 7, lines 52-55. In view of the foregoing, it is respectfully submitted that at least the limitations relating to intercepting and modifying the item generated by the application program at the server device in response to a request from the client process executing on the client device as recited in Claim 1 are not taught or suggested by *Elnozahy*, *Mortensen* and *Guthrie*, considered alone or in combination, and Claim 1 is therefore patentable over *Elnozahy*, *Mortensen* and *Guthrie*.

CLAIMS 3, 5-10, 13, 16, 17, 21, 22, 24-27 AND 29-41

Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 all depend from Claim 1 and include all of the limitations of Claim 1. It is therefore respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 are patentable over *Elnozahy*, *Mortensen* and *Guthrie* for at least the reasons set forth herein with respect to Claim 1. Furthermore, it is respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 recite additional limitations that independently render them patentable over *Elnozahy*, *Mortensen* and *Guthrie*.

CLAIMS 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 AND 70-82

Claim 42 is similar to Claim 1, except in the context of a computer-readable medium. It is therefore respectfully submitted that Claim 42 is patentable over *Elnozahy*, *Mortensen* and *Guthrie* for at least the reasons set forth herein with respect to Claim 1. Claims 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 all depend from Claim 42 and include all of the limitations of Claim 42. It is therefore respectfully submitted that Claims 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy*, *Mortensen* and *Guthrie* for at least the reasons set forth herein with respect to Claim 42.

In view of the foregoing, it is respectfully submitted that Claims 1, 3, 5-10, 13, 16-19, 21-42, 44, 46-51, 54, 57-60 and 62-82 are patentable over *Elnozahy*, *Mortensen* and *Guthrie*.

REJECTION OF CLAIMS 11, 12, 14, 15, 52, 53, 55, 56, 83 AND 85 UNDER 35 U.S.C. § 103(a)

In the Final Office Action, Claims 11, 12, 14, 15, 52, 53, 55, 56, 83 and 85 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy* in view of *Mortensen* further in view of *Guthrie* and further in view of *Burgess et al.*, U.S. Patent No. 5,696,701 (hereinafter “*Burgess*”). It is respectfully submitted that Claims 11, 12, 14, 15, 52, 53, 55, 56, 83 and 85 are patentable over *Elnozahy*, *Mortensen*, *Guthrie* and *Burgess*, considered alone or in combination, for at least the reasons provided hereinafter.

Claims 11, 12, 14 and 15 depend from Claim 1 and include all of the limitations of Claim 1. As previously set forth herein, Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy*, *Mortensen* and *Guthrie*. For example, the Claim 1 limitations relating to intercepting and modifying the item generated by the application program at the server device in response to a request from the client process executing on the client device are not taught or suggested by *Elnozahy*, *Mortensen* and *Guthrie*. It is also respectfully submitted that these limitations are not taught or suggested by *Burgess* and it is understood that *Burgess* is relied upon in the final Office Action for the limitations of Claims 11, 12, 14 and 15 and not for these limitations. It is therefore respectfully submitted that Claims 11, 12, 14 and 15 are not taught or suggested by *Elnozahy*, *Mortensen*, *Guthrie* or *Burgess*, considered alone or in combination, and that Claims 11, 12, 14 and 15 are therefore patentable over *Elnozahy*, *Mortensen*, *Guthrie* and *Burgess*. Claims 52, 53, 55 and 56 recite limitations similar to Claims 11, 12, 14 and 15, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 52, 53, 55 and 56 are patentable over *Elnozahy*, *Mortensen*, *Guthrie* and *Burgess* for at least the reasons set forth herein with respect to Claim 11, 12, 14 and 15.

Claim 83 recites limitations that, as described herein with respect to Claim 1, are not taught or suggested by *Elnozahy*, *Mortensen*, *Guthrie* or *Burgess*. For example, the Claim 83 limitations relating to intercepting and modifying the item generated by the application program at the server device in response to a request from the client process executing on the client device are not taught or suggested by *Elnozahy*, *Mortensen*, *Guthrie* or *Burgess*. Claim 85 recites limitations similar to Claim 83, except in the context of a computer-readable medium. It is therefore respectfully submitted that Claims 83 and 85 are patentable over *Elnozahy*, *Mortensen*, *Guthrie* and *Burgess* for at least the reasons set forth herein with respect to Claim 1.

CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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on April 23, 2007 by 
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